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7 **THE DISTRICT COURT OF GUAM**

8 S.C.,

CIVIL CASE NO. 21-00015

9 Plaintiff,

10 vs.

11 **DECISION & ORDER**
12 **RE: MOTION TO DISMISS**

13 GOVERNMENT OF GUAM; BENJAMIN
14 LEON GUERRERO II, and individual; DOES
15 ENTITIES 1-5; and DOES-INDIVIDUALS 6-
16 50, inclusive,

17 Defendants.

18 Before the court is Defendant Government of Guam's ("GovGuam") Motion to Dismiss
19 Plaintiff's Complaint per Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Mot., ECF No.
20 3 ("Motion"). For the reasons stated herein, Defendant's Motion to Dismiss is **GRANTED IN**
21 **PART.**

22 **I. Factual and Procedural Background**

23 On May 20, 2021, Plaintiff S.C. initiated this action by filing a Complaint. Compl., ECF
24 No. 1. Therein, Plaintiff asserted seven causes of action: two counts of Child Sexual Abuse
(Counts 1 and 2); Negligence (Count 3); Negligent Supervision (Count 4); Negligent Hiring and
Retention (Count 5); Breach of Fiduciary Duty/Confidential Relationship (Count 6); and

1 Deprivation of Federal Civil Rights (Count 7). *Id.* Notably, the Complaint invokes this court’s
2 jurisdiction through both diversity and federal subject matter jurisdiction. *Id.* ¶ 2.

3 On June 14, 2021, Defendant filed the instant Motion. Mot., ECF No. 7. On July 20,
4 2021, Plaintiff filed his Opposition to Defendant’s Motion to Dismiss. Opp’n., ECF No. 11
5 (“Opposition”). GovGuam filed its reply on August 10, 2021. Reply, ECF No. 20.

6 **II. Discussion**

7 GovGuam’s Motion sets forth two arguments: (a) the court lacks subject matter
8 jurisdiction over Counts II through VI; and (b) Plaintiff fails to state claims capable of relief for
9 Counts II through VII.

10 **a. Lack of Subject Matter Jurisdiction – 12(b)(1)**

11 GovGuam moves to dismiss Counts II through VI for lack of subject matter jurisdiction
12 pursuant to Federal Rule of Civil Procedure 12(b)(1). Specifically, GovGuam argues that the
13 court lacks subject matter jurisdiction because (i) GovGuam refused to waive sovereign
14 immunity for Plaintiff’s failure to exhaust administrative remedies, and (ii) Plaintiff alleges
15 intentional torts. Mot. at 7, ECF No. 7.

16 **i. Sovereign Immunity**

17 Generally, subject matter jurisdiction refers to the court’s statutory or constitutional
18 power to adjudicate a case. *Pistor v. Garcia*, 791 F.3d 1104, 1110 (9th Cir. 2015). “Although
19 sovereign immunity is only quasi-jurisdictional in nature, Rule 12(b)(1) is still a proper vehicle
20 for invoking sovereign immunity from suit.” *Id.* at 1111. In the context of a Rule 12(b)(1) motion
21 to dismiss on the basis of sovereign immunity, “the party asserting subject matter jurisdiction has
22 the burden of proving its existence, i.e. that immunity does not bar the suit.” *Id.* (internal
23 citations and quotations omitted).

24 The Organic Act of Guam invested the Government of Guam with sovereign immunity.

1 See 48 U.S.C. § 1421a (stating that the Government of Guam may be sued “with the consent of
2 the legislature evidenced by enacted law”); see also *Marx v. Gov’t of Guam*, 866 F.2d 294, 298
3 (9th Cir.1989) (“controlling authority and the legislative history of the Organic Act compel our
4 holding that the government of Guam has inherent sovereign immunity.”).

5 However, sovereign immunity is not absolute and may be waived. *Coll. Sav. Bank v. Fla.*
6 *Prepaid Postsecondary Educ. Expense. Bd.*, 527 U.S. 666, 670 (1999). Waiver will generally
7 exist where the state or agency either voluntarily invokes the court’s jurisdiction or makes a clear
8 declaration that it intends to submit itself to jurisdiction. *Id.* at 675-76. In other words, waiver
9 will be found “only where stated by the most express language or by such overwhelming
10 implications from the text as [will] leave no room for any other reasonable construction.”
11 *Ramsey v. Muna*, 849 F.3d 858, 860-61 (9th Cir. 2017) (quoting *Edelman v. Jordan*, 415 U.S.
12 651, 673 (1974)) (brackets in original).

13 “Under the Organic Act, a waiver of immunity must be in the form of duly enacted
14 legislation.” *Sumitomo Constr. Co., Ltd v. Gov’t of Guam*, 2001 Guam 23 ¶ 24. “The Guam
15 Legislature is the sole body tasked with defining the scope of the government’s immunity, and
16 can broaden or restrict the government’s amenability to suit and ultimate liability.” *Id.* Guam’s
17 Legislature has chosen, by way of 5 Guam Code Ann. § 6101 *et seq.* (the Government Claims
18 Act), to grant a limited waiver of sovereign immunity subject to numerous conditions. One of
19 those conditions requires filing a claim “within 18 months from the date the claim arose.” 5
20 Guam Code Ann. § 6106(a).

21 Here, GovGuam argues that because sovereign immunity is only waived for
22 administrative claims lodged with an 18-month period, Plaintiff’s claim, filed in 2020 concerning
23 events that occurred in 1998, is untimely. Mot. at 11, ECF No. 7. Conversely, Plaintiff argues
24 that because 7 Guam Code Ann. § 11301.1 (“No Limit for Child Sex Abuse statute”) permits a

1 minor's sex abuse claim to be commenced "at any time," his administrative claim filed outside
2 the 18-month period is not time barred. Opp'n at 11, ECF No. 11.

3 Plaintiff bears the burden of proving that sovereign immunity does not bar his suit against
4 GovGuam. However, the court finds that Plaintiff fails to meet this burden for two reasons. First,
5 Plaintiff fails to establish a *prima facie* case that he filed an administrative claim under the
6 Government Claims Act within 18 months from the date of the alleged abuse. Plaintiff alleges
7 that he was sexually abused in 1998 by his substitute teacher and baseball coach Benjamin Leon
8 Guerrero while attending George Washington High School. Compl. ¶¶ 15-18, ECF No. 1.
9 Plaintiff also allegedly reported these offenses to Guam Police Department ("GPD"), and despite
10 this, alleges that GPD took no action of any kind. *Id.* ¶ 21-22. Crucially, however, Plaintiff fails
11 to allege that he filed an administrative claim within 18 months of the alleged abuse. Therefore,
12 Plaintiff fails to establish a *prima facie* case that he complied with the Government Claims Act
13 and consequently, that GovGuam waived its sovereign immunity. Plaintiff's alternative
14 argument, that he did not realize his injury until many years later and that the statute of
15 limitations is thereby tolled, Opp'n at 13, ECF No.11, is undermined by Plaintiff's allegation that
16 he reported the alleged sexual abuse to GPD. To the contrary, this allegation indicates that
17 Plaintiff realized, in 1998, the criminal and harmful nature of the alleged sexual abuse. This,
18 paired with Plaintiff's failure to allege or otherwise indicate that he filed administrative claim
19 within 18 months from the date of the alleged abuse in 1998, renders his civil claims untimely.

20 Second, Plaintiff's claims fail because Plaintiff fails to establish that Guam's Legislature
21 unequivocally expressed GovGuam's consent to be sued in the absence of a timely
22 administrative claim. The No Limit on Child Sexual Abuse statute permits "[a]ny claims arising
23 from an incident of child sexual abuse [to be commenced] ... at any time." 7 Guam Code Ann. §
24 11301.1(a) (emphasis added). Similarly, "[a]ny claim ... which has been barred by virtue of the

1 expiration of the previous *civil statute of limitations* shall be permitted to be filed in any court of
2 competent jurisdiction.” *Id.* § 11301.1(b) (emphasis added). However, these provisions conflict
3 with the Government Claims Act, which requires that “[a]ll claims under this Act must be filed
4 within 18 months from the date the claim arose.” 5 Guam Code Ann. § 6106(a) (emphasis
5 added).

6 The court may not infer that Guam’s Legislature consented to GovGuam being sued
7 under the Child Sexual Abuse statute in the absence of a timely administrative claim. Rather, the
8 court may find a waiver of sovereign immunity “only where stated by the most express language
9 or by such overwhelming implications from the text as [will] leave no room for any other
10 reasonable construction.” *Ramsey*, 849 F.3d at 860-61. Here, however, there are two opposing
11 and reasonable constructions of these statutes, as evidenced by the parties’ briefings. Plaintiff
12 argues that “[i]t would be absurd to allow [the No Limit on Child Sexual Abuse statute] to
13 retroactively apply to statutes of limitations for filing lawsuits but not allow it to apply to the
14 time limit for filing a pre-suit Government Claim.” Opp’n at 4, ECF No. 11. The plain language
15 of the statute supports Plaintiff’s argument, wherein “[a]ny claim ... may be commenced ... at
16 any time.” 7 Guam Code Ann. § 11301.1(a) (emphasis added). Conversely, GovGuam argues
17 that the Child Sexual Abuse statute “does not explicitly state that a timely, pre-suit
18 administrative claim is waived, nor was the Government Claims Act amended for such an
19 exception.” Reply at 8, ECF No. 20. While the plain language of the statute supports Plaintiff’s
20 argument, precedent supports GovGuam’s argument that sovereign immunity is waived only
21 with “the most express language.” *See Ramsey*, 849 F.3d at 860-61.

22 The court finds that there is no “clear declaration that [Guam] intends to submit itself to
23 jurisdiction” under the No Limit on Child Sexual Abuse statute. *See Coll. Sav. Bank*, 527 U.S. at
24 670. Moreover, the court finds that there are two equally reasonable constructions concerning the

1 interaction of the Government Claims Act and the No Limit on Child Sexual Abuse statute. If
2 there is “room for any other reasonable construction,” then the court is prohibited from finding a
3 waiver of sovereign immunity. *See Ramsey*, 849 F.3d at 860-61 (emphasis added).

4 Thus, the court is left with no alternative but to find that Plaintiff failed to establish that
5 GovGuam waived sovereign immunity and consented to being sued despite Plaintiff’s untimely
6 administrative claim. As a result, the court finds that it does not have subject matter jurisdiction
7 over GovGuam. The court therefore **GRANTS** GovGuam’s Motion to Dismiss Counts II
8 through VI against GovGuam.

9 **ii. Intentional Torts**

10 Because the court finds that it lacks subject matter jurisdiction over GovGuam by virtue
11 of GovGuam’s sovereign immunity, the court need not address the parties’ arguments
12 concerning intentional torts.

13 **b. Failure to State a Claim – 12(b)(6)**

14 GovGuam also moves to dismiss for failure to state a claim pursuant to Federal Rule of
15 Civil Procedure 12(b)(6). Specifically, GovGuam argues that (i) Plaintiff’s filing is 20 years
16 beyond the statute of limitations, (ii) Plaintiff fails to plead sufficient facts in Counts II through
17 VI to support his claims, and (iii) Plaintiff fails to state a claim in Count VII capable of relief
18 under 42 U.S.C. § 1983. Mot. at 7, ECF No. 7. Because the court has already determined that it
19 does not have subject matter jurisdiction over GovGuam in Counts II through VI, the court only
20 addresses item (iii), which pertains to Count VII, relief under 42 U.S.C. § 1983.

21 Count VII is addressed “Against Individual Defendant Leon Guerrero and DOES 5-60.”
22 Compl. at 17, ECF No. 1. Notably absent is GovGuam. While Plaintiff alleges that GovGuam is
23 the employer of individual Defendant Benjamin Leon Guerrero and is a “proper entity to be sued
24 under 42 U.S.C. § 1983,” *Id.* ¶ 9, Plaintiff also explicitly states that “Defendant GovGuam is not

1 a part of this Seventh Cause of Action.” *Id.* ¶ 80.

2 The court cannot locate, nor does GovGuam cite, any authority that permits one
3 defendant to move to dismiss a claim that is not against that defendant but rather is against only
4 other co-defendants. Therefore, the court **DENIES AS MOOT** GovGuam’s Motion to Dismiss
5 Count VII against GovGuam.

6 **c. Leave to Amend**

7 “Ordinarily, a case dismissed for lack of subject matter jurisdiction should be dismissed
8 without prejudice so that a plaintiff may reassert his claims in a competent court.” *Frigard v.*
9 *United States*, 862 F.2d 201, 204 (9th Cir. 1988). But where, as here, “the bar of sovereign
10 immunity is absolute,” dismissal with prejudice is permitted. *Id.* The court therefore dismisses
11 Counts II through VI against GovGuam **WITH PREJUDICE**.

12 **III. Conclusion**

13 The court finds that Plaintiff has failed to sufficiently establish the court’s subject matter
14 jurisdiction over GovGuam, and therefore **GRANTS IN PART** GovGuam’s Motion to Dismiss
15 and **ORDERS** dismissal of Counts II through VI against GovGuam **WITH PREJUDICE**.
16 Furthermore, the court finds Plaintiff did not allege that GovGuam violated 42 U.S.C. § 1983 in
17 Count VII, and therefore **DENIES AS MOOT** GovGuam’s Motion to Dismiss as it pertains to
18 Count VII.

19 **SO ORDERED.**



/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Mar 25, 2022